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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF SOLANO COUNTY, Respondent; J.B., Real Party in Interest.	A156502 (Solano County Super. Ct. No. VCR223153)

The People[1] filed a petition for writ of mandate with this court seeking relief from an order by respondent Sacramento County Superior Court remanding the proceedings to juvenile court for real party in interest J.B. Specifically, petitioner argues Senate Bill 1391's bar on the transfer of minors under the age of 16 for criminal prosecution as adults is unconstitutional because it is inconsistent with and does not further the intent

[1] While the petition for writ of mandate before this court is titled with the People as petitioner, the case was filed by the Solano County District Attorney, who is representing the People in the underlying juvenile case. As required by California Rules of Court, rule 8.29(c), petitioner also served the Attorney General with the petition. The Attorney General, on behalf of the People, as an interested party, has taken the position with this court that Senate Bill No. 1391 (2017–2018 Reg. Sess.) (Stats. 2018, ch. 1012, § 1; Senate Bill 1391) is not an unconstitutional amendment.

and purpose of the Public Safety and Rehabilitation Act of 2016 (Proposition 57). We disagree and deny the petition for writ of mandate.[2]

I. BACKGROUND

Because the issue presented involves a limited question regarding the constitutionality of Senate Bill 1391, we limit our recitation of the background to those facts relevant to the petition.

J.B. was charged by information with two counts of murder. J.B. was 15 at the time of the alleged murders. Despite J.B.'s age, the People filed the charges in criminal court pursuant to the direct filing procedures enacted at that time under Proposition 21.

J.B. entered into a plea agreement with the People to testify against certain codefendants. As part of that agreement, J.B. pled guilty to one count of voluntary manslaughter, one count of being an accessory after the fact to murder, and one count of robbery. The parties agreed J.B. would receive a 15-year sentence in state prison, but sentencing would not occur until after he testified.

While waiting for the main codefendant's trial to occur and prior to J.B.'s sentencing, the California electorate first passed Proposition 57 and the Legislature then passed Senate Bill 1391. (See *In re Edwards* (2018) 26 Cal.App.5th 1181, 1185; *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529, 538 (*K.L.*).) Proposition 57, in relevant part, eliminated prosecutors' ability to file felony complaints against minors directly in adult criminal court. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305.) Senate Bill 1391 prohibited in most cases minors aged 14 or 15 from being transferred to criminal court. (*K.L.*, at p. 538.)

J.B. subsequently moved to have his case remanded to juvenile court for disposition, a transfer he argued was now mandated under Senate Bill 1391. The People

[2] On April 30, 2019, petitioner filed a request for oral argument with this court. On July 3, 2019, petitioner filed a letter with this court asking to rescind its prior request for oral argument and accept petitioner's March 22, 2019 brief as petitioner's "Reply to the Return to the Order to Show Cause." Neither respondent nor J.B. has filed any objection to petitioner's requests. Accordingly, we grant the requested relief in petitioner's July 3, 2019 letter.

opposed the motion, arguing Senate Bill 1391 was an unconstitutional amendment of Proposition 57. The People asserted granting J.B.'s motion would violate the specific intent of Proposition 57. The court granted J.B.'s motion. It found Senate Bill 1391 constitutional because it could not conclude there was a "clear and unquestionable" conflict with Proposition 57. The court also granted a temporary stay of its proceedings to allow for writ review. Petitioner subsequently filed its pending petition for writ of mandate.

II. DISCUSSION

Petitioner argues respondent erred in finding Senate Bill 1391 constitutional because it impermissibly amends Proposition 57. Petitioner argues Proposition 57 may only be amended by the Legislature if such amendment is " 'consistent with and further[s] the intent' of Proposition 57." Petitioner asserts Senate Bill 1391 does not meet this hurdle because it directly contradicts the intent of Proposition 57 to continue the practice of prosecuting certain 14- to 15-year-old offenders in criminal court. We disagree.

A. *Relevant Legislative History*

The relevant legislative history was recently summarized in *K.L.*, *supra*, 36 Cal.App.5th 529: "For more than a century, California courts have recognized that proceedings for juveniles charged with crimes are different than for adults accused of crimes. [Citation.] . . . [¶] ' "Historically, a child could be tried in criminal court only after a judicial determination, before jeopardy attached, that he or she was unfit to be dealt with under juvenile court law. Since 1975 the procedural requirements for fitness hearings have been established by [Welfare and Institutions Code] section 707." [Citation.] The general rule used to be that "any individual less than 18 years of age who violates the criminal law comes within the jurisdiction of the juvenile court, which may adjudge such an individual a ward of the court." ' (*People v. Superior Court (Lara)*[, *supra*,] 4 Cal.5th 299, 305.) Indeed, for decades only those minors who were at least 16 years of age at the time of the offense could be transferred to criminal court. (See *Hicks v. Superior Court* (1995) 36 Cal.App.4th 1649, 1654–1655; see also Stats. 1961, ch.

1616, § 2, pp. 3459, 3462, 3485 [as enacted in 1961, the ‘ “Juvenile Court Law” ’ set 16 as a minimum age for transfer to criminal court for prosecution or to state prison for incarceration].) However, in 1994, the Legislature expanded that group to include minors aged 14 or 15 at the time of the offense, for certain charged crimes and with certain limiting circumstances. (Stats. 1994, ch. 453, § 9.5, p. 2523; *Hicks*, at pp. 1655–1656.) At that time, any transfer of a minor was still subject to a judicial determination of unfitness. (*Hicks*, at pp. 1656–1657; see also *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 548–549.)

“Then, in 2000, the voters enacted Proposition 21, ‘the Gang Violence and Juvenile Crime Prevention Act.’ (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at pp. 544–545.) At that time, ‘certain minors who were 16 years of age or older at the time they committed specified crimes were required to be prosecuted in a court of criminal jurisdiction—without any requirement of a determination by the juvenile court that the minor was unfit for treatment under the juvenile court law.’ (*Id*. at p. 549; see also *Juan G. v. Superior Court* (2012) 209 Cal.App.4th 1480, 1488–1489.) Among other things, Proposition 21 extended direct filing in criminal court by the prosecution to those minors aged 14 or 15 years old, who were charged with certain offenses in certain circumstances. (*Manduley*, at pp. 549–550.)

“ ‘California voters approved Proposition 57, dubbed the Public Safety and Rehabilitation Act of 2016, at the November 2016 general election.’ (*In re Edwards* (2018) 26 Cal.App.5th 1181, 1185.) With respect to juveniles, ‘Proposition 57 changed the procedure again, and largely returned California to the historical rule. “Among other provisions, Proposition 57 amended the Welfare and Institutions Code so as to eliminate direct filing by prosecutors. Certain categories of minors . . . can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor’s maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated.” ’ (*People v. Superior Court (Lara)*, *supra*, 4 Cal.5th at p. 305.) Indeed, under Proposition 57, youths aged 16 or older who had committed felonies were eligible for transfer, following a judicial determination of

fitness for juvenile adjudication, while youths aged 14 or 15 were eligible following a judicial determination only if they had committed certain enumerated serious crimes. ([Voter Information Guide, Gen. Elec. (Nov. 8, 2016)] text of Prop. 57, § 4.2, p. 142.) Courts have noted that the enactment of Proposition 57 reflects a 'sea change in penology regarding the relative culpability and rehabilitation possibilities for juvenile offenders' over the 16 years since Proposition 21 was enacted, as reflected in several judicial opinions. (*People v. Vela* (2017) 11 Cal.App.5th 68, 75, review granted July 12, 2017, S242298, citing *Graham v. Florida* (2010) 560 U.S. 48, 67 [a juvenile may not be sentenced to life without the possibility of parole for a nonhomicide offense] & *Miller v. Alabama* (2012) 567 U.S. 460, 469–472 [a juvenile may not be sentenced to life without the possibility of parole, even for a homicide, without consideration of youth-related factors in sentencing].)" (*K.L.*, *supra*, 36 Cal.App.5th at pp. 536–538.)

"Then, in 2018, the Legislature enacted Senate Bill 1391, which further amended [Welfare and Institutions Code] section 707 by removing the authority of the prosecutor to seek transfer of a minor who was 14 or 15 years old at the time of committing the offense, unless the minor was not apprehended prior to the end of juvenile court jurisdiction." (*K.L.*, *supra*, 36 Cal.App.5th p. 538.) Section three of Senate Bill 1391 declares that it "amended Proposition 57 and 'is consistent with and furthers the intent of Proposition 57.' " (*People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994, 998 (*Alexander C.*).)

B. *Constitutionality of Senate Bill 1391*

Petitioner contends Senate Bill 1391 is a "*direct repeal*" of Proposition 57.[3] Petitioner first argues the provisions creating transfer hearings demonstrate a legislative intent "to continue the practice of *permitting* prosecution of 14-15 year-olds who commit the serious/violent offenses," whereas Senate Bill 1391 prevents the transfer of almost all

[3] All parties agree Senate Bill 1391 amends Proposition 57. Accordingly, our review is limited to whether the amendment is consistent with and furthers the intent of Proposition 57. (See Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 5, p. 145.)

14 or 15 year olds. Second, petitioner argues the original draft of Proposition 57 sought to establish 16 as the minimum age for transfer to criminal court—i.e., Proposition 57 originally included language that sought to accomplish what Senate Bill 1391 now attempts. Petitioner asserts the deletion of that language evidences voters explicitly intended to allow the transfer of 14 and 15 year olds under Proposition 57.

1. Legal Standard

"The Legislature may not, without a vote of the people, amend an initiative statute 'unless the initiative statute permits amendment or repeal without the electors' approval.' [Citation.] Proposition 57 expressly permits amendment by a majority vote of the Legislature, but only 'so long as such amendments are consistent with and further the intent' of the proposition." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 999.) Our Supreme Court has analyzed similar language and articulated the standard we must follow: " 'we shall uphold the validity of [the legislative amendment] if, by any reasonable construction, it can be said that the statute furthers the purposes' or intent of Proposition 57." (*Id.* at p. 1000, citing *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1256.) " 'In identifying the purposes of an initiative, we examine the initiative as a whole, and are guided by, but not limited to, its general statements of purpose. [Citation.] We must give effect to an initiative's specific language, as well as its major and fundamental purposes.' " (*K.L.*, *supra*, 36 Cal.App.5th at p. 535.)

2. Analysis

Both the Third Appellate District and Division Four of the First Appellate District have recently addressed whether Senate Bill 1391 conflicts with Proposition 57. In *Alexander C.*, *supra*, 34 Cal.App.5th 994, our colleagues in Division Four addressed a nearly identical petition. The court first identified Proposition 57's five express "purpose[s]." Proposition 57's statement of "purpose and intent" reads: "In enacting this act, it is the purpose and intent of the people of the State of California to: [¶] 1. Protect and enhance public safety. [¶] 2. Save money by reducing wasteful spending on prisons. [¶] 3. Prevent federal courts from indiscriminately releasing prisoners. [¶] 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. [¶]

5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 2, p. 141.) In addressing those purposes, the court concluded "Senate Bill 1391 is consistent with and furthers Proposition 57's goal of emphasizing rehabilitation for juvenile offenders." (*Alexander C.*, at p. 1000.) Specifically, the court noted Senate Bill 1391 "takes Proposition 57's goal of promoting juvenile rehabilitation one step further by ensuring that almost all who commit crimes at the age of 14 or 15 will be processed through the juvenile system" and does not "detract[] from Proposition 57's stated intent that, where a transfer decision must be made, a judge rather than a prosecutor must make the decision." (*Alexander C.*, at pp. 1000–1001.) The court also concluded Senate Bill 1391 furthered Proposition 57's express purposes because Senate Bill 1391 "protects and enhances public safety [by] expand[ing] the category of minors who will remain in the juvenile system" and saves money and prevents indiscriminate prisoner releases "by narrowing the class of minors who would be subject to a lengthy prison sentence in an adult institution." (*Alexander C.*, at pp. 1001, 1002.)

The *Alexander C.* court also found Senate Bill 1391 did not contradict any implied purpose or intent of Proposition 57. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1002.) The court rejected the People's argument that Proposition 57 intended to allow the practice of permitting prosecution of 14 and 15 year olds in criminal court for three reasons. (*Alexander C.*, at p. 1002.) First, the court explained "allowing certain 14 and 15 year olds to be prosecuted in criminal court is not an 'actual change[]' wrought by Proposition 57, but a continuation of prior practice. . . . Proposition 57 effected change to the procedure for prosecuting minors in criminal court, but it did not expand—and was not intended to solidify—the class of juvenile offenders subject to that procedure." (*Id.* at pp. 1002–1003.) Second, the court rejected the suggestion that any change to the provisions of Proposition 57 changed its intent. (*Alexander C.*, at p. 1003.) Rather, the court emphasized Proposition 57's purpose must be interpreted more broadly as " 'the process for transferring minors to adult court for criminal prosecution,' " which is not inconsistent with Senate Bill 1391. (*Alexander C.*, at p. 1004.) Finally, the court

concluded the drafting history of Proposition 57 does not undermine the constitutionality of Senate Bill 1391. (*Alexander C.*, at p. 1004.) The court agreed the drafting history showed " 'the proponents of Proposition 57 intentionally omitted language that would have the same effect as [Senate Bill] 1391' " and thus the initiative " ' "should not be construed to include the omitted provision." ' " (*Ibid.*) However, the court explained, the " 'construction of a specific provision of law' " is distinct from " 'the purpose and intent of legislation,' " and "nothing about the intent of Proposition 57, as it can be inferred from examining the initiative as a whole, is inconsistent with" Senate Bill 1391. (*Alexander C.*, at p. 1004.)

The Third Appellate District reached a similar conclusion in *K.L.*, *supra*, 36 Cal.App.5th 529. In that case, the Sacramento County District Attorney filed a writ petition asking the court to hold Senate Bill 1391 void as an unconstitutional amendment to Proposition 57. (*K.L.*, at pp. 532–533.) The court examined both the express purposes set forth in Proposition 57, as well as various ballot materials. It first noted Senate Bill 1391 does not contravene Proposition 57's stated intent regarding the process for deciding whether juveniles should be tried in adult court, but rather "has limited the pool of minors eligible for such a transfer." (*K.L.*, at p. 539.) The court further noted Proposition 57 "does not state as its specific intent that minors aged 14 or 15 be subject to prosecution in criminal court." (*K.L.*, at p. 539.) The court evaluated various ballot materials and concluded, "Taken as a whole, and in the context of juvenile offenders, it appears the intent of Proposition 57 was to reduce the number of youths who would be prosecuted as adults. . . . This scheme, and these stated purposes and intent are not contravened by Senate Bill 1391. Rather, Senate Bill 1391 furthers the stated purpose and intent of Proposition 57 to have fewer youths removed from the juvenile justice system." (*Id.* at p. 541.)

We agree with the conclusions reached by our colleagues in Division Four and the Third Appellate District. The only express purpose of Proposition 57 alleged by petitioner to be in conflict with Senate Bill 1391 is the requirement that "a judge, not a prosecutor, . . . decide whether juveniles should be tried in adult court." But Senate Bill

1391 is not inconsistent with this requirement. After Senate Bill 1391's passage, prosecutors must still present transfer motions to judges before minors may be charged in criminal court. Senate Bill 1391 merely removes certain minors from the category of juveniles for which a transfer motion may be brought. Nothing in Proposition 57 requires 14 and 15 year olds to be subject to transfer motions.

Nor does Senate Bill 1391 conflict with some alleged broader purpose of Proposition 57 to continue the practice of prosecuting certain 14 and 15 year olds as adults. To the contrary, "the intent of the electorate in approving Proposition 57 was to broaden the number of minors who could potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment." (*People v. Vela* (2018) 21 Cal.App.5th 1099, 1107.) Proposition 57 " 'as a whole' " (*Amwest Surety Ins. Co. v. Wilson, supra,* 11 Cal.4th at p. 1257) strongly endorses rehabilitation as opposed to punishment for juveniles. The Voter Information Guide stated Proposition 57 sought to "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles."[4] (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, § 2, p. 141.) Likewise, the argument in favor of Proposition 57 stated "minors who remain under juvenile court supervision are less likely to commit new crimes." (Voter Information Guide, Gen. Elec., *supra*, argument in favor of Prop. 57, p. 58.) Senate Bill 1391 thus furthers the broad purpose of Proposition 57 by expanding the category of minors who will remain within the juvenile justice system.

Finally, petitioner's argument that voters expressly rejected a categorical ban on transferring 14 and 15 year olds to criminal court is erroneous, and petitioner's citation to *People v. Soto* (2011) 51 Cal.4th 229 misses the mark. In *People v. Soto*, the Legislature amended a statute to specifically "remove[] the concept of consent from child molestation cases." (*Id.* at p. 245.) The court thus explained, " 'The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the

[4] We may look to the ballot pamphlet to understand the broader intent and purpose behind Proposition 57. (See *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.)

conclusion that the act should not be construed to include the omitted provision.' " (*Ibid.*) Undoubtedly, Proposition 57 cannot be construed to *include* the omitted language. But our analysis focuses on whether Senate Bill 1391 conflicts with the *purpose* of Proposition 57. Here, the initial language in Proposition 57 establishing 16 as the minimum age for transfer to adult court was never presented to the electorate. To the contrary, the proponents of Proposition 57 removed that language before the election. Voters never rejected such language because they were never asked to vote upon it. We thus will not interpret Proposition 57 as having an intent—i.e., requiring that prosecutors be allowed to seek transfer of 14 and 15 year olds to criminal court—that voters were never asked to consider. (See *Alexander C.*, *supra*, 34 Cal.App.5th at p. 1004 ["nobody has argued that Proposition 57 prevents [the minor's] case from being transferred to criminal court. It is Senate Bill 1391 that accomplishes this result. And nothing about the intent of Proposition 57 . . . is inconsistent with this result."].)

III. DISPOSITION

The petition for writ of mandate is denied. The stay issued by this court on February 25, 2019 shall expire as soon as this decision is final.

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Margulies, J.

We concur:

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Humes, P. J.

_____
Banke, J.

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